

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JASON ERIC SONNTAG,

Plaintiff,

vs.

GURRES et al.,

Defendants.

3:09-cv-00637-RCJ-VPC

ORDER

This is a (former) prisoner civil rights case arising out of alleged excessive force. Plaintiff has filed three motions. First, Plaintiff has asked the Court to clarify that the Fourth Amendment claim remains viable. The Court denies the motion. Certain excessive force claims have survived summary judgment, as noted in previous orders. But it is the Eighth Amendment, not the Fourth Amendment, that governs claims of excessive force used against prisoners serving sentences pursuant to conviction. *Graham v. Connor*, 490 U.S. 386, 394 (1989) (citing *Tennessee v. Garner*, 471 U.S. 1, 7–22 (1985); *Whitley v. Albers*, 475 U.S. 312, 318–26 (1986)).

Second, Plaintiff appears to complain of the magistrate judge's participation in the case at all, because he has refused to waive his right to a district court judge. The Court denies the motion. Plaintiff is entitled to a district court judge for trial and certain other critical matters, but the district court may lawfully refer to a magistrate judge certain non-dispositive matters. *See* 28 U.S.C. § 636. Plaintiff may object to the district judge any particular rulings by the magistrate judge. *See* Fed. R. Civ. P. 72(a). The waiver form Plaintiff refers to in his motion is a form whereby a litigant may agree to have the magistrate judge determine all matters, including

1 conducting the trial. The participation of the magistrate judge to the extent permitted under
2 § 636 need not be assented to by the parties.

3 Third, Plaintiff has moved for offensive summary judgment on his remaining claims. The
4 magistrate judge has issued a Report and Recommendation (“R&R”) recommending denying the
5 motion for untimeliness and for failure to satisfy the initial burden to show there is no genuine
6 issue of material fact for trial. The Court agrees on both grounds.

7 Finally, the Court notes that it will not tolerate one more insult directed towards the Court
8 by Plaintiff, such as the statement in his Objection to the R&R that the magistrate judge “must be
9 suffering from amnesia” and that she should be held in contempt. The Court can understand that
10 Plaintiff is upset about the wrongs he perceives himself to have suffered, but if he wishes to
11 participate in civil society, he must learn to channel his outrage appropriately. Plaintiff will have
12 his trial if he properly prosecutes it, but not if he continues to show contempt for the Court and
13 its officers. The Court will order Plaintiff to show cause why he should not be held in contempt
14 at the next hint of disrespect.

15 **CONCLUSION**

16 IT IS HEREBY ORDERED that the Motion for Clarification (ECF No. 178), the Motion
17 to Vacate (ECF No. 181), and the Motion for Summary Judgment (ECF No. 189) are DENIED.

18 IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 193) is
19 ADOPTED.

20 IT IS SO ORDERED.

21 Dated this 30th day of August, 2013.

22 
23 ROBERT E. JONES
24 United States District Judge
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